



COMMONWEALTH OF MASSACHUSETTS
**Board of Registration
of
Hazardous Waste Site Cleanup Professionals**

**MINUTES
of
BOARD MEETING**

Held on
February 12, 2008

Meeting Location: Mass. Department of Environmental Protection
627 Main Street
Worcester, Mass.

Prepared by: A. Fierce

[Approved as corrected on Mar. 27, 2008.]

1. **Call to Order:** Chairperson Janine Commerford called the meeting to order at 3:20 p.m. The other Board members present were Gail Batchelder, Kirk Franklin, Gretchen Latowsky, Robert Luhrs, Paul Mullen, and Debra Stake. Board members Deborah Farnsworth, Christophe Henry, Debbie Phillips, and Kelley Race were absent. The LSP Board staff members present were Allan Fierce, Lynn Read, Brian Quinlan, Ron Viola, Terry Wood, and Al Wyman. Also present was Wes Stimpson, the Executive Director of the LSP Association.
2. **Announcements:** None.
3. **Agenda:** The Board members agreed to follow the draft Agenda.
4. **Minutes:** The Board reviewed the draft minutes of the meeting of the Board held on January 9, 2008. **A motion was made and seconded to approve the minutes as drafted. The motion was approved unanimously.**
5. **Report from Quasi-Judicial Sessions – Final Disciplinary Actions Taken:** Ms. Commerford announced that there were no final disciplinary actions to report at this month's meeting. However, she did state that the Board had previously approved an early agreement for discipline in 02C-04/07C-07 and that an Administrative Consent Order had been prepared, signed by the Respondent LSP, and now needed to be signed by an authorized representative of the Board. She explained that neither she nor the co-chairs of the Professional Conduct committee were eligible to sign the ACO, and she asked for a volunteer. With Ms. Latowsky's consent, **a motion was made and seconded to**

authorize Ms. Latowsky to sign the ACO on behalf of the Board. The motion was approved unanimously.

6. **Decisions Regarding License Applicants:** The staff presented the following Application Docket:

<u>Docket No. 1:</u> The applicants' names, company names, application numbers, and Application Review Panel recommendations were read into the record:				
		<u>App. No.</u>	<u>ARP</u>	<u>Rec.</u>
Martin Hilfinger	Groundwater & Env. Serv.	#7675	208	A
Douglas M. Lindsay	LFR, Inc.	#9383	208	A

A motion was made and seconded that the Board accept the recommendations from Application Review Panel #208, i.e., that the applications submitted by Mr. Hilfinger and Mr. Lindsay be accepted and that they be found eligible to take the exam. The motion was approved unanimously.

<u>Docket No. 2:</u> The applicants' names, company names, application numbers, and Application Review Panel recommendations were read into the record:				
		<u>App. No.</u>	<u>ARP</u>	<u>Rec.</u>
Marc E. Brochu	Lessard Env't'l	#4938	209	A
David J. Foss	Fuss & O'Neill	#4695	209	A
Chester H. Myers	Apex Companies	#1701	209	A

Mr. Mullen was recused and left the room.

A motion was made and seconded that the Board accept the recommendations from Application Review Panel #209, i.e., that the applications submitted by Mr. Brochu, Mr. Foss, and Mr. Myers be accepted and that they be found eligible to take the exam. The motion was approved unanimously.

Mr. Mullen returned and rejoined the meeting.

7. **License Renewal Applications:**

A. Renewal Dockets. The staff presented the following License Renewal Dockets:

Renewal Docket #1

License Renewal

Renewal Date: Jan. 30, 2008

Have met all requirements for renewal.

New Renewal Date: January 30, 2011

1. Michael R. Ainsworth #1855

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2. John H. Ankiewicz	#6698
3. William E. Baird	#2791
4. James F. Begley	#2061
5. Mark J. Begley	#8120
6. William J. Betters	#3163
7. Prasanta K. Bhunia	#2999
8. Craig E. Blake	#3760
9. Carol D. Bois	#3965
10. Marco D. Boscardin	#5573
11. David L. Bramley	#7639
12. Dolores M. Branco	#4014
13. Gordon T. Brookman	#2754
14. Michael J. Brown	#6250
15. Thomas C. Cambareri	#3788
16. David A. Carlson	#5160
17. Walter T. Chaffee	#4454
18. Yee Cho	#4662
19. Richard G. Christian	#6774
20. John H. Clement	#5103
21. Richard C. Cote	#2359
22. Robert S. Cummings	#9003
23. Arthur J. Cunningham	#7430
24. Richard J. Cushing	#3063
25. Anthony M. DeTufo	#8959
26. Michael J. DeRosa	#3452
27. Anne Marie Desmarais	#3676
28. Mathew A. DiPilato	#3124
29. Richard E. Doherty	#6508
30. David E. Egan	#9099
31. Joseph G. Engels	#5326
32. James D. Fitzgerald	#9342
33. Russell Fitzpatrick	#1927
34. James E. Gagnon	#2870
35. Richard P. Geisler	#9181
36. Mark A. Germano	#9996
37. Ileen S. Gladstone	#9719
38. Chester T. Gwardyak	#1992
39. Sara R. Hanna	#9926
40. Joseph E. Higgins	#7196
41. Michael E. Hopkins	#9599
42. Christopher J. Horan	#2306
43. Dawn L. Horter	#9350
44. William R. Hoyerman	#2093
45. Raymond C. Johnson	#6118
46. Brian F. Klingler	#8493

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47. Richard G. Kowalski	#7220
48. William E. Kuriger	#8104
49. Joseph A. Landyn	#1217
50. Raymond F. Leather	#3211
51. Alfred C. Leonard	#7333
52. Lawrence H. Lessard	#9763
53. Frank W. Lilley	#4183
54. Charles A. Lindberg	#6891
55. Thomas P. Luby	#4075
56. Robert C. Luhrs	#3621
57. Alistair P. MacDonald	#9380
58. Geoffrey R. May	#5755
59. Peter J. McGlew	#2140
60. Dorothy A. McGlincy	#7336
61. Jack M. McKenna	#4913
62. Paul J. McManus	#5711
63. Lawrence McTiernan	#2398
64. Brian V. Moran	#7351
65. Cedwyn Morgan	#6544
66. James P. Murphy	#5483
67. Bruce H. Nickelsen	#9000
68. Jonathan M. Noris	#3013
69. William R. Norman	#8945
70. Thomas J. Nunno	#2527
71. John M. O'Donnell	#9595
72. James D. Okun	#4836
73. Kevin J. O'Reilly	#9908
74. Ralph P. Penney	#7755
75. Ian M. Phillips	#2963
76. Michael J. Pierdinock	#4078
77. George G. Preble	#9995
78. John D. Rendall	#9415
79. Matthew E. Robbins	#9495
80. Joseph P. Salvetti	#9546
81. Andrea E. Sewall	#8998
82. Kevin C. Sheehan	#4813
83. Paul D. Steinberg	#1286
84. William R. Swanson	#6406
85. Frank R. Sweet	#8412
86. Michael J. Talbot	#1743
87. Raymond W. Talkington	#6573
88. Daniel E. Taylor	#5473
89. Simon B. Thomas	#1984
90. David J. Thompson	#3722
91. Dennis G. Tuttle	#3133

92. Edward P. Van Doren	#7804
93. Frank S. Vetere	#2413
94. Allen R. Walker	#6894
95. Michael J. Webster	#6934
96. Olaf Westphalen	#9982
97. Russell J. Wilder	#9134
98. Thomas Williamson, Jr.	#7212
99. Duncan W. Wood	#8765
100. Eric S. Wood	#7262
101. James S. Young	#7710
102. John F. Ziegler	#5654
103. Martha L. Zirbel	#9451

Renewal Docket #2
Request for a 90-day Extension

Renewal Date: Jan. 30, 2008

Have requested, and met all requirements
for, a 90-day extension.

Extended Renewal Date: April 29, 2008

1. Raymond G. Ball	#4521
2. James K. Barrett	#6054
3. Matthew J. Barvenik	#1631
4. Kevin J. Beaulieu	#1699
5. Michael P. Bingham	#4141
6. Donald H. Bruehl	#2003
7. Ronald K. Burns	#9492
8. R. Duff Collins	#6314
9. Kathleen C. Creighton	#9096
10. David J. Crispin	#9788
11. Jeffrey A. Curtis	#9749
12. Michael F. Dacey	#3742
13. Denis W. D'Amore	#6039
14. John C. Drobinski	#2196
15. Brandon J. Fagan	#9445
16. Leland J. Figgins, Jr.	#9370
17. Michael F. Geisser	#6997
18. Maureen J. Hill Collins	#5876
19. Francis J. Hopcroft	#1620
20. Janet S. Humes	#6215
21. Lawrence E. Kahrs	#2890
22. Charles E. Klingler	#9435
23. John Kubiczki	#4280
24. David A. Maclean	#9056

25. John W. McTigue	#6423
26. Robert A. Mullin	#8186
27. Mark E. Nelson	#7893
28. Abhijit Nobis	#4165
29. Paul G. Sutton	#9240
30. Michael A. Powers	#3436
31. Neil M. Ram	#6799
32. Kevin J. Riley	#2831
33. Stephen A. Sakakeeny	#5455
34. Marc W. Slechta	#5082
35. Alvin J. Snyder III	#5309
36. Thomas J. Stevenson	#5800
37. Alton D. Stone	#4058
38. Roger P. Thibault	#1443
39. Ellen R. Thibodeau	#9119
40. Joseph P. Vitale	#6746
41. Edward P. Zimmerman	#6567

Renewal Docket #3

Renewal after a 90-day Extension

Original Renewal Date: Oct. 30, 2007

Have met all requirements for renewal.

New Renewal Date: Oct. 30, 2010

Robert M. Donati	#5878
John J. McHugh	#1808
Michael J. Zylich	#2248

Renewal Docket #4

Renewal After 90-day Extension Expired

Has met all requirements for renewal.

New Renewal Date: April 30, 2011

Brian A. Emery	#5895
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A motion was made and seconded to renew to licenses of the LSPs on Renewal Dockets #1, #3, and #4 for a three-year period ending on the date indicated in each Docket, and to grant a 90-day extension to the LSPs on Renewal Docket #2. The motion was approved unanimously.

B. Special Review of Renewal Application

Mr. Fierce requested that the Board conduct a special review of the license renewal application submitted by an LSP in the January 30th renewal group.

During the course of the Board's discussion, the LSP's name was not mentioned. Mr. Fierce asked the Board for permission to do this because the application disclosed that the LSP had been subject to professional discipline in another state. Therefore, Mr. Fierce suggested, the Board's review of this application would be more like a disciplinary matter than review of a standard license renewal, and in disciplinary matters the Board is not apprised of the LSP's identity until a final decision is made. Absent such a policy, many Board members could be recused in each case, and important disciplinary matters would end up being decided by what could be a small number of non-recused members.

The Board gave its consent to Mr. Fierce's request to keep the LSP's name confidential at this stage. It was agreed, however, that the LSP's name should be presented in the Minutes of this meeting.

[Thereafter, during the discussion that followed, the LSP's name and other identifying information were not mentioned. As requested by the Board, this identifying information is being presented in the Minutes below.]

Mr. Fierce explained that Richard J. Wozmak (#5463) had submitted a complete Renewal Application (with more than enough credits) on which he checked the box indicating that he had been disciplined by another professional board since his previous renewal. To further explain this matter, Mr. Wozmak submitted a "Settlement Agreement" from 2006 with the New Hampshire Board of Licensure for Professional Engineers ("New Hampshire P.E. Board").

In that Settlement Agreement, signed in February 2006, Mr. Wozmak stipulated that if a disciplinary hearing were to take place, Hearing Counsel for the New Hampshire P.E. Board would offer evidence to prove professional misconduct by the following facts:

- That he submitted fraudulent personal claims and expense reports over a period of several years to the company for which he worked (and for which he was an owner, officer, and director);
- That the overall loss to his company due to these improper expense report submissions was somewhere between approximately \$18,000 and \$50,000; and
- That when questioned about this conduct, he admitted to submitting improper claim and expense reports.

According to the Settlement Agreement, none of the improper expenses were charged to any clients, and restitution to Mr. Wozmak's company was accomplished in the process of his final termination as an employee and redemption of his shares in the company.

The New Hampshire P.E. Board found that he had engaged in misconduct that constituted grounds for imposing a disciplinary sanctions against him. In the Settlement Agreement, Mr. Wozmak consented to the imposition of the following discipline:

- He was “reprimanded.”
- His license to practice as a P.E. in New Hampshire was suspended for a period of three months.
- He was required within the following year to meaningfully participate in at least 20 hours of continuing education in ethics and professionalism for engineers (in addition to the hours of continuing education required for renewal of his P.E. license).
- He was assessed an administrative fine in the amount of \$10,000.

After thoroughly discussing Mr. Wozmak’s application to renew his license as an LSP, the LSP Board members concurred that, under the circumstances, the Board would not be acting to protect public health, safety, welfare, and the environment were it simply to renew Mr. Wozmak’s license unconditionally. His conduct was viewed as too serious to do this. The Board agreed that its only options were to deny his renewal application or to renew it subject to sufficient conditions to warrant a reasonable belief by all concerned that he would henceforth be completely honest in all his actions as an LSP, including those actions that have a substantial connection to the professional responsibilities of an LSP.

Some members favored this second option – conditional renewal – because, after disciplining Mr. Wozmak in the manner described above, the New Hampshire P.E. Board had sufficient faith in his future honesty to restore his P.E. license at the conclusion of the three-month suspension period. Others also noted that none of the dishonesty for which he was disciplined concerned his professional services as either a P.E. in New Hampshire or an LSP in Massachusetts, nor did it involve any clients. Some members, however, expressed the concern that his submission of the Settlement Agreement was not accompanied by any documentation that the discipline imposed by the New Hampshire P.E. Board was actually carried out or that Mr. Wozmak had made restitution to his former company.

At the conclusion of discussion, a **motion was made, seconded, and approved unanimously** to renew Mr. Wozmak’s license for a 3-year period subject to the following conditions:

1. That within 30 days of the receipt of the letter from the LSP Board conditionally renewing his license, he must submit documentation to the LSP Board establishing that he has made restitution to his former company, as was indicated by the Settlement Agreement with the New Hampshire P.E. Board;
2. That upon contacting the New Hampshire P.E. Board, the LSP staff confirms that he has paid the \$10,000 administrative fine, served a three-month license suspension,

obtained at least 20 hours of continuing education in ethics and professionalism for engineers (in addition to the hours of continuing education required for renewal of his P.E. license), and had his license reinstated at the conclusion of the three-month suspension period;

3. That he be warned not to commit any act of dishonesty, fraud, deceit, or lack of good moral character having any substantial connection to the professional responsibilities of an LSP in Massachusetts, a P.E. in New Hampshire, or any other professional license or certification he may currently hold or obtain in the future;
4. That he be required to notify the LSP Board within 20 days after being disciplined in any manner by any other licensing or certifying authority; provided further that if the LSP Board concludes that he has failed to make such notification within 20 days, he will be served with an Order To Show Cause why his license should not be revoked;
5. That if he does not within 30 days of the receipt of the Board's letter provide the documentation noted above in # 1, his license will automatically lapse without further action by the Board, and he will have to reapply to become licensed again as an LSP;
6. That if the LSP Board learns or is notified, by a Complainant or otherwise, that he may have committed any act or acts that involve dishonesty, fraud, deceit, or lack of good moral character that have a substantial connection to the professional responsibilities of an LSP, the Board will immediately commence a disciplinary investigation in which his prior conduct described in the above-referenced Settlement Agreement will be considered to be an "aggravating factor" for purposes of determining the appropriate discipline, should the further charges be proven; and
7. That a copy of the above-referenced Settlement Agreement shall become a permanent part of his official public file at the LSP Board.

The motion was approved unanimously.

8. Other Licensing-Related Matters:

A. New Panel Assignments and Scheduling. Mr. Quinlan sought and obtained volunteers for Application Review Panel #210 (Ms. Commerford, Mr. Luhrs, and Ms. Stake).

B. Appeals Status Report. Ms. Wood reported that there are no pending appeals regarding the Board's denial of a license application.

C. Inactive Status Report. The staff reported the following:

- Maria Pinaud (#9198) was placed on Inactive Status at her request at the close of business on 1/11/08.
- Michael L'Heureux (#7062) allowed his Inactive Status to expire (did not resume Active Status) at the close of business on 1/30/08. As of that date, he was no longer licensed as an LSP.

D. Total Number of Active and Inactive LSPs. Mr. Fierce reported that the total number of Active LSPs as of the date of this meeting was 555. In addition, 7 LSPs are on Inactive Status.

9. Examinations:

A. New Licensees. Mr. Fierce reported that the exam has not been administered since the previous meeting. Therefore, there are no new licensees to announce.

B. Next LSP Exam. The staff reported that the next exam is scheduled for February 15, 2008.

10. Continuing Education Committee Report:

A. Course and Conference Approval Requests. Mr. Wyman reported that the Committee had met earlier in the day and had the following course and conference recommendations to present to the full Board:

Requestor: LSP Alan Weiss

Sponsor: UMass Amherst

Course Title: Introduction to Hydrogeology

Credits Requested: College credit (non-grade) = 50% of hours taken (up to max. of 44 hours); Technical credit

Committee Recommendation: **Approve for credits requested.**

Sponsor: LSP Association

Course Title: The Glacial Geology of Massachusetts for Licensed Site Professionals

Credits Requested: 4 Technical credits

Committee Recommendation: **Approve for credits requested.**

Sponsor: LSP Association

Course Title: Introduction to ShortForms for Human Health Risk Assessment

Credits Requested: 4 Technical credits

Committee Recommendation: **Approve for credits requested.**

Sponsor: UMass Amherst

Conference Title: Triad National Conference – requested for Conference credit (50%; Technical), with additional one-for-one credit for the following workshops:

- Anatomy of a Well Structured Project – requested for 6.5 Technical credits
- Spatial Analysis Decision Assistance (SADA) – requested for 3.5 Technical credits

- Advanced Design Application & Data Analysis for Field-Portable X-Ray Fluorescence (XRF) Instrumentation in Soil Matrices – requested for 2 Technical credits

Credits Requested: [see above]

Committee Recommendation: **Approve conference and workshops for credits requested.**

Sponsor: SEAK, Inc.

Course Title: 17th Annual National Expert Witness Conference

Credits Requested: 13+ Technical credits

Committee Recommendation: **Deny.** The Committee members agreed that the content of this course did not meet the definition of either “Regulatory” or “Technical,” nor was it reasonably likely to maintain or enhance an LSP’s ability to render competent Professional Services.

Sponsor: MassDEP

Course Title: Recognizing Release Notifications and Entering & Terminating Remedy Operation Status [a/k/a “WERO Night”]

Credits Requested: 2 DEP Course credits

Committee Recommendation: **Approve for credits requested.**

Sponsor: LSP Association

Request for approval of changes to two previously approved courses.

Course Titles:

- Overview of Vapor Intrusion and Mitigation Issues for LSPs (#1335)
- Vapor Intrusion and Mitigation Issues facing LSPs with Special Emphasis on Sampling and Analysis (#1340)

Credits Requested: Keep as is (4 Technical non-DEP credits for each course).

Changes Requested: The course provider requested re-approval of these two courses due to minor changes to the content of each course. The changes are being made to update course content regarding upcoming MassDEP policy as well to add information about sub-slab depressurization systems for new construction.

Committee Recommendation: **Approve** changes and maintain identical course numbers and credits.

Sponsor: MARCOR Remediation, Inc.

Course Title: PCBs in Common Building Materials

Credits Requested: 4 Technical credits

Committee Recommendation: **Deny.** The Committee members agreed that the content of this course did not meet the definition of either “Regulatory” or “Technical,” nor was it reasonably likely to maintain or enhance an LSP’s ability to render competent Professional Services.

A motion was made and seconded to accept the Committee's recommendations. The motion was approved unanimously.

- B. Other Business – Waiver Request from Paul Sutton.** The Committee reported that it had reviewed a letter submitted by LSP Paul Sutton requesting a waiver from the Board's license renewal regulations. In the letter, he offered a series of reasons why he was unable over the past three years to obtain the credits he needed to renew, and he requested that the Board grant a one-year extension beyond his current January 30, 2008, license renewal deadline. He stated that during this extension period he would obtain the 29 additional continuing education credits he needed to renew his license. (Of these 29 credits, he needed 6 DEP Course credits.)

After discussion, the Committee members agreed that Mr. Sutton's petition presented sufficient good cause, as required by 309 CMR 2.12, to grant him a license renewal extension. However, they were reluctant to simply recommend that the Board grant his request for an additional year to obtain the credits needed to renew his license. That would be a longer extension than the Board has ever granted. In addition, some members felt that granting a full year would not comport with the Board's standard practice, when granting waivers, of asking LSPs to obtain all the credits they need in the shortest time possible.

After discussing the best way to give Mr. Sutton some relief while being consistent with the Board's past practices when granting waivers, the Committee members agreed that he had demonstrated sufficient good cause for the Board to waive the eligibility requirements for a 90-day extension, and they agreed to recommend to the full Board that he be granted a 90-day extension of his license from its expiration date at the close of business on January 30, 2008. While the Committee members agreed that it would be difficult for any LSP to earn 29 credits before the end of April, they did not think it was impossible to do, so long as the LSP was very diligent.

After the Board members had discussed the Committee's recommendation to grant Mr. Sutton's waiver request and extend his license for 90 days, **a motion was made and seconded to approve the recommendation. The motion was approved unanimously.**

11. **Professional Conduct Committee:** Since all the Board members present at this meeting were also present at the Professional Conduct Committee meeting held earlier in the day, the Board agreed to forego a Committee report.
12. **Personnel, Budget, and Fees:** With respect to the Board's budget for next fiscal year, Mr. Fierce reported that the Governor had filed his proposed budget with the Legislature, and it contained a recommendation that the Board receive \$424,836 in FY-09. If approved, this would be an increase of more than \$47,000 over this year's budget. The House Ways & Means Committee now will review the Governor's budget, Mr. Fierce said.

13. **Status of Board Member Replacements by Governor:** Ms. Commerford reported that it appears that background checks are underway for both of the candidates recommended to the Governor.
14. **Next Article for LSPA News:** The next deadline for the submission of articles is March 28, 2008. The Board suggested that the staff write an article about the matter that is the subject of the OTSC Ms. Wood is preparing to file.
15. **Scheduling of Next Meeting:** Subject to a poll Mr. Fierce will conduct of all the members (including those absent at this meeting), the Board agreed to hold its next meeting beginning in the morning of March 27, 2008, at Ms. Latowsky's office (JSI Center for Environmental Health Studies) in Boston. The following meeting will be held on April 30, also subject to a poll of all the Board members.
16. **Adjournment:** The meeting was adjourned at approximately 4:37 p.m.